

Amendments to the Drawings:

Amended Figures 5 and 15 accompany this response, wherein the reference number to the anti-wicking fillets is changed from "80" to be "71" in Figure 5 and wherein unidentified matter originally included by oversight is removed from Figure 15.

All references in the Figures to the cuvette magazine are identified as "80" and the specification has been corrected accordingly.

REMARKS

The specification has been amended to provide consistency between reference characters in the Figures and in/within the specification. As amended, the cuvette magazine is consistently identified only by the reference character "80" and the anti-wicking fillets are consistently identified only by the reference character "71".

Drawings

Corrected drawings in accord with 37 CFR 1.121(d) are included. Drawing 5 has been amended to identify the anti-wicking fillets by the reference character "71" as per the amended specification. Drawing 15 has been amended to remove unintended unidentified matter.

Claim Rejections –35 USC §103

Claims 3-10 are rejected under 35 USC 103(a) as being unpatentable over Link (US 6,098,819) in view of US Patent 6,321,609 to Mengel et al.

Link discloses a storage magazine comprising a number of racks vertically stacked and locked one atop the other (Col. 1, lines 38-40; Col. 3, lines 43-54) Each rack is adapted to support two plates side-by-side, each plate having features to securely lock in place to the rack until it is pulled therefrom (Col. 4, lines 8-14). As a consequence of this arrangement, "Only when both holding plates 4 are removed from the upper rack 2 may this (upper rack 2) be separated from the lower rack 3." (Col. 4, lines 40-43) Link's objective is to provide "racks that on contact do not fall apart" as opposed to known systems wherein racks non-positively fit together. (Col. 1, lines 20-26)

Applicant's invention is a magazine comprising a number of vertically oriented, adjacent chutes, each chute adapted to freely and slideably hold a number of rectangular

cuvettes stacked one atop another therein (paragraph 34). As a lowermost cuvette is rejected from a chute, others freely drop in place; pads and ledges are provided so that cuvettes do not fall out (paragraph 35). Applicant's magazine has curved front and back walls which Link does not have, so the Examiner turns to Mengel to correct this deficiency.

The Examiner states that it would have been obvious to use Mengel's curved walls where the stored cuvettes are roundly-shaped so that the cuvettes have a better fit in the magazine. There are two misunderstandings here: (1) Applicant's magazine stores rectangular-shaped cuvettes (paragraph 32 and Figure 5) that are not roundly-shaped; and, (2) Applicant's magazine has curved walls so that a number of them may be placed side-to-side in a circular cuvette loading station as seen in Figure 15.

In order to establish a *prima facie* case of obviousness under 35 USC 103, MPEP 706.02(j) requires that, "First, there must be some suggestion or motivation, either in the references themselves or in the knowledgeable generally available to one of ordinary skill in the art, to modify the reference or combine the reference teachings."

Further, "The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art and not based on applicant's disclosure."

In making the present obviousness rejection under 35 USC 103, the Examiner has relied upon the combination of Link and Mengel. The Examiner has suggested that curved walls make a better fit for round (curved) cuvettes; using the same logic, then, rectangular walls would be expected make a better fit for rectangular cuvettes. Because Applicant's cuvettes are rectangular, one of ordinary skill would be inclined to use a rectangular magazine for a better fit. Since Mengel teaches the use of curved walls, inherently teaching against the use of rectangular walls, one of ordinary skill would clearly not turn to Mengel. Thus, there is no reason to combine the teaching's of Link and Mengel. Furthermore, there is no "teaching or suggestion to make the claimed combination . . . found in the prior art" ; in fact, it would be illogical to employ Mengel's curved walls to house rectangular cuvettes. Applicant thus believes that the rejection of his invention over the combination of Link and Mengel is based on applicant's disclosure. The rejection is therefore felt to be improper and should be withdrawn.

Conclusion

Applicant believes that this application contains patentable subject matter and that the foregoing amendments provide a basis for favorable consideration and allowance of all claims; such allowance is respectfully requested. If any matter needs to be resolved before allowance, the Examiner is encouraged to call Applicant's representative at the number provided below.

Respectfully submitted,



Leland K. Jordan
Registration No. 36,560
Agent for Applicant

DADE BEHRING INC.
1717 Deerfield Road, Box 778
Deerfield, IL 60015-778
Phone: (610) 255-1441